

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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IN THE MATTER OF COMPLAINT OF
WILMINGTON TUG, INC. AS OWNER OF
“LINDSEY,” A 70-FOOT 1989 TOWING VESSEL,
FOR EXONERATION FROM OR LIMITATION
OF LIABILITY

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CIVIL ACTION
IN ADMIRALTY
No.

**COMPLAINT FOR EXONERATION
FROM OR LIMITATION OF LIABILITY**

Plaintiff, Wilmington Tug, Inc. (hereinafter “Petitioner”) as owner of the “LINDSEY,” a certain 70-foot 1989 towing vessel built by Gladding-Hearn Shipbuilding (hereinafter “the Vessel”), by and through its attorneys, Palmer Biezup & Henderson LLP, hereby petitions for exoneration from or limitation of liability pursuant to 46 U.S.C. app. §§ 183-189, and in support thereof avers upon information and belief as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) and Rule F of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.
2. Petitioner Wilmington Tug, Inc. is a corporation organized under and existing pursuant to the laws of the State of Delaware with an office and place of business at 11 Gist Road, Wilmington, 19801.
3. The Vessel is a 70-foot 1989 motor towing vessel built by Gladding-Hearn Shipbuilding.

4. At all times material hereto, Petitioner was the owner of the Vessel and a party entitled to petition for exoneration from or limitation of liability within the meaning of the Revised Statutes of the United States.

5. On or about October 30, 2003, while upon the navigable waters of the United States, in or near the Delaware River, the Vessel was allegedly involved in an incident that has given rise to claims and potential claims including the claims of Brian Moore (hereinafter the "Incident").

6. Any and all injuries and damages allegedly resulting from the Incident were not caused by or attributable to any fault, design, neglect or want of due care on the part of Petitioner, or anyone for whom Petitioner may be responsible, and any and all such alleged damage was occasioned and occurred without Petitioner's privity or knowledge.

7. Prior to and on October 30, 2003, Petitioner used due diligence to make the Vessel seaworthy for the service for which it was engaged.

8. Based upon the information presently available, as a result of the Incident, claims have been made which could potentially exceed Petitioner's interest in the Vessel, said value of possible claims being specifically denied by Petitioner.

9. There was no freight pending which was due and payable to Petitioner at the time of the Incident.

10. Upon information and belief, there were and are no unsatisfied liens or claims of liens pending against the Vessel arising from the Incident or the voyage described herein.

11. Petitioner's interest in the Vessel after the Incident was \$1,200,000.00. (See Affidavit of Value which is attached hereto and incorporated herein by reference).

12. Upon information and belief, there are two other suits pending against Petitioner (Delaware Superior Court, New Castle County (No. 06C-10-305 MJB) and Pennsylvania Court of Common Pleas, Philadelphia County (No. 061002073)) with no suits pending against the Vessel and no claims or demands prior or paramount to those which may arise by reason of the Incident.

13. Petitioner denies any and all liability for any loss, damage or injury which may be claimed by any person or entity arising out of the Incident, and therefore demands exoneration from liability.

14. In addition, and in the alternative, Petitioner claims the benefit of limitation of liability as provided for in the Revised Statutes of the United States and the various amendments and supplements thereto and, more particularly, the United States Limitation of Shipowners' Liability Act, 46 U.S.C. §§ app. 183-189.

15. Petitioner is ready, able and willing and hereby offers to provide security for the value of Petitioner's interest in the Vessel following the Incident, interest at the rate of 6% per annum, and costs, by depositing with the Court a bond in approved form.

16. All and singular, the premises are true and within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

WHEREFORE, Petitioner prays:

A. That if deemed necessary by the Court or at the reasonable request of any claimant, the Court cause due appraisement to be made of the value of Petitioner's interest in the Vessel.

B. That the Court order Petitioner to file an Ad Interim Stipulation with surety pending any demand for appraisal of Petitioner's interest in the Vessel.

C. That the Court enter an Order directing the issuance of a monition to all persons claiming alleged damages for any and all losses, damage, injury or destruction done, occasioned or incurred by, or resulting from, the Incident or occurring during the voyage upon which the Vessel was then engaged, citing them to appear before this Honorable Court and make due proof of their claims, and also to appear and answer the allegations of this Complaint according to the laws of this Court on or before a certain time to be fixed by the monition, or be thereafter barred from making any such claims against Petitioner, its agents, representatives, crew members or any person on whose behalf Petitioner may be liable or against the Vessel.

D. That the Court enter an Order directing that upon the giving of an Ad Interim Stipulation, an injunction shall issue restraining the further prosecution of any and all suits, actions and proceedings which may have already begun to recover for alleged damages sustained as a result of the Incident and further enjoining the commencement or prosecution thereafter of any suit, action or legal proceeding of any nature against Petitioner, its agents, representatives or any other person in respect to any claim or claims arising out of the Incident.

E. That the Court in this proceeding adjudge:

(i) that Petitioner is not liable to any extent for any loss, damage or injury for any claim whatsoever in any way arising out of or in consequence of the Incident and, therefore, is entitled to exoneration, or

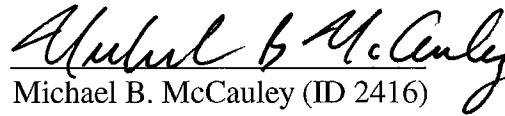
(ii) if Petitioner shall be adjudged liable and the claims are affirmatively proven, then such liability for all claims shall be limited to the amount of the value of the Petitioner's interest in the Vessel after the Incident and that Petitioner be discharged therefrom upon the surrender of his interest in the Vessel and that the limitation fund be divided *pro rata* among any

claimants as may duly prove their claims, saving to all any priorities to which they may be legally entitled, and that a decree may be entered discharging Petitioner from all further liability.

F. That Petitioner may have such other and further relief as this Court may deem just and proper in the circumstances.

Respectfully submitted,

PALMER BIEZUP & HENDERSON LLP

By: 
Michael B. McCauley (ID 2416)
1223 Foulk Road
Wilmington, DE 19803
(302) 594-0895
(302) 478-7625 (fax)
mccauley@pbh.com

Dated: April 5, 2007

VERIFICATION

I, Michael B. McCauley, hereby declare as follows:

I am a partner in the law firm of Palmer Biezup & Henderson LLP, attorneys for Petitioner Delaware Bay Launch Service, Inc.;

I have read the foregoing Complaint, and all the allegations of fact contained therein are true and correct to the best of my knowledge, information and belief, which is based upon information obtained during the course of counsel's investigation;

I certify under penalty of perjury that the foregoing is true and correct.

Executed on April 5, 2007.



Michael B. McCauley
Michael B. McCauley

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS WILMINGTON TUG, INC., AS OWNER OF "LINDSEY," A 70-FOOT 1989 TOWING VESSEL		DEFENDANTS																																																																																																																																																																																																													
(b) County of Residence of First Listed Plaintiff <u>New Castle, DE</u> (EXCEPT IN U.S. PLAINTIFF CASES)		County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.																																																																																																																																																																																																													
(c) Attorney's (Firm Name, Address, and Telephone Number) Palmer Biezup & Henderson LLP 1223 Foulk Road, Wilmington, DE 19803 (302) 594-0895		Attorneys (If Known)																																																																																																																																																																																																													
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			<input type="checkbox"/> 5 Transferred from another district (specify) _____	<input type="checkbox"/> 430 Banks and Banking																																																																																																																																																																																																											
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VI. CAUSE OF ACTION		Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 46 U.S.C. app. § 185																																																																																																																																																																																																													
		Brief description of cause: Vessel owner's petition for exoneration from or limitation of liability																																																																																																																																																																																																													
VII. REQUESTED IN COMPLAINT:		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No																																																																																																																																																																																																											
VIII. RELATED CASE(S) IF ANY		(See instructions): JUDGE	DOCKET NUMBER																																																																																																																																																																																																												
DATE	SIGNATURE OF ATTORNEY OF RECORD																																																																																																																																																																																																														
04/05/2007	<i>Paul B. McCloskey</i>																																																																																																																																																																																																														
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